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Summary record of the 2350th meeting
Held at Headquarters, New York, on Monday, 20 March 2006, at 3 p.m.

Chairperson: Ms. Chanet
later: Mr. Solari Yrigoyen (Vice-Chairperson)
later: Ms. Chanet (Chairperson)

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The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Second periodic report of Hong Kong Special Administrative Region of the People's Republic of China (CCPR/C/HKG/2005/2 and CCPR/C/HKG/Q/2)

1. *At the invitation of the Chairperson, the delegation of Hong Kong Special Administrative Region of the People's Republic of China took places at the Committee table.*

2. **Mr. Zhang Yishan** (People's Republic of China) said that the Basic Law of Hong Kong SAR stipulated that the provisions of the International Covenant on Civil and Political Rights applicable to the Region remained valid after 1 July 1997 and were to be implemented through the laws of the Region. Although China was not yet a State party to the Covenant, in order to comply fully with the principle of "one country, two systems", the administration of Hong Kong SAR had prepared its second periodic report on the implementation of the Covenant in the Region.

3. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region) said that although it had previously focused on efforts to raise public awareness to foster a culture of mutual understanding and tolerance among people of different races, the Government, acting in response to the concern expressed by the Committee in its previous concluding observations, had announced its intention to legislate against racial discrimination. In September 2004 the Government had issued a consultation paper on the proposed legislative framework to collect public opinion. The bill was currently being finalized. Meanwhile, public education efforts were ongoing, led by the Committee on the Promotion of Racial Harmony, a multi-ethnic, multi-cultural body that advised the Government on strategies for fostering communal harmony and intercultural understanding.

4. While the Government was aware that the Committee's concern applied also to discrimination on the grounds of sexual discrimination, deep-rooted traditional values could pose difficulties. In September 2004, a sexual minorities forum had been established to provide a formal and regular channel of communication between the Government and persons of different sexual orientations, which had met with a positive response. In May 2005, a gender identity and sexual orientation unit had been established within the Home Affairs Bureau to actively promote equal opportunities for gay, lesbian and transgender persons and operate a funding scheme to support worthwhile community projects on sexual orientation. It was hoped that that work would help change attitudes and pave the way for the introduction of legislation.

5. Regarding arrangements for electing the Chief Executive in 2007 and forming the Legislative Council in 2008, Hong Kong SAR's electoral system would be determined in accordance with the Basic Law, and gave rise to no incompatibility with the provisions of the Covenant. Notwithstanding the reservation made to article 25 (b), both the central authorities and the Hong Kong SAR Government were fully committed to the election of the Chief Executive and all members of the Legislative Council by universal suffrage.

6. Since 1997, steady progress had been made in the area of constitutional development. The first term Chief Executive had been elected by an Election Committee comprising 400 representatives, mostly elected, from different sectors of the Hong Kong community. For the second term election the size of the Election Committee had been doubled to 800. As regards the Legislative Council, the Basic Law provided for a steady increase in the number of seats returned by geographical constituencies based on universal suffrage — 20 in the first term, 24 in the second term and 30 in the current third term. It should be noted that the voter turnout of 1.7 million or 55 per cent of the registered electorate and the number of contesting candidates in the 2004 Legislative Council election had both been historic highs.

7. The Hong Kong SAR Government was keen to further open up the electoral system, and to that end in January 2004 the Chief Executive had established the Constitutional Development Task Force to come up with proposals for the electoral arrangements for 2007 and 2008. The proposals would have substantially broadened public participation in the elections. Regrettably, despite receiving widespread support, the proposals had not achieved the required two-thirds majority support of all the members of the Legislative Council. Accordingly, the next two would be held on the basis of the existing arrangements. Nonetheless, the SAR Government had initiated discussions on the

formulation of a roadmap through the Commission on Strategic Development in November 2005, with the aim of designing a universal suffrage system by early 2007.

8. The Government had intensified its efforts to combat domestic violence and child abuse in recent years. The Government's strategy comprised preventive measures such as community education and public awareness, support services for victims ranging from housing and financial assistance to counselling, and specialized services and crisis intervention. The Domestic Violence Ordinance was being reviewed to assess how protection to victims of domestic violence could be strengthened and the Social Welfare Department planned to increase contact with vulnerable families and improve their access to support services; two batterer-interventions programmes would also be piloted to address the needs of batterers and break the cycle of violence.

9. **The Chairperson** invited the delegation to address questions 1 to 16 on the list of issues (CCPR/C/HKG/Q/2).

Constitutional and legal framework within which the Covenant is implemented and conformity of laws with it (article 2 of the Covenant)

10. **Mr. Lai** Yee Tak (Hong Kong Special Administrative Region), responding to question 1 on the list of issues, said that the Standing Committee of the National People's Congress was vested with the power to interpret the Basic Law in accordance with the Constitution of the People's Republic of China and the Basic Law itself; that power was respected by the courts of the Region. The Standing Committee's interpretation of 6 April 2004 and its subsequent decision of 26 April 2004 were legal and constitutional. Moreover, they could not be considered "re-interpretations", as the Standing Committee had not previously authoritatively interpreted the relevant provisions of the Basic Law or its annexes.

11. **Mr. Allcock** (Hong Kong Special Administrative Region), added that the interpretation under discussion did not concern any provision of the Covenant, but rather the right under the Basic Law to develop, in certain circumstances, democratic institutions.

12. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), turning to question 2, said that in view of the existing institutions to promote and safeguard human rights, such as the Equal Opportunities Commission (EOC) and the Ombudsman, the Government did not envisage establishing a regional human rights institution. Ombudsman's mandate covered any maladministration by the Independent Commission Against Corruption (ICAC) or the police force in respect of the Code on Access to Information; given that other mechanisms existed for the treatment of complaints against the police or the ICAC, there were currently no plans to extend it.

13. In response to question 3, she said that an independent panel had in fact been appointed to investigate the alleged incident, and the authorities were currently working to implement its recommendations. The 2002 review of the Equal Opportunities commission had focused on organizational and operational matters, with a view to strengthening the latter's effectiveness.

14. *Mr. Solari Yrigoyen, Vice-Chairperson, took the Chair.*

15. **Mr. Allcock** (Hong Kong Special Administrative Region), answering question 4, said that since the National Security Bill had been withdrawn, no timetable had been established for recommencing the exercise.

Principles of gender equality and non-discrimination; freedom from torture and cruel, inhuman or degrading treatment; right to be free of arbitrary arrest and detention; security of the person and protection from arbitrary arrest; treatment of prisoners and other detainees (articles 3, 7, 9, 10 and 26 of the Covenant)

16. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), in reply to question 5, said that measures to combat violence against women should also encompass violence against men, as 15 per cent of victims of domestic violence were men. The issue of domestic violence was receiving high-level attention within the administration and in the community in general, prompted by a major incident the previous year when a man had murdered his wife and two children before committing suicide. The Chief Executive had emphasized the need for the whole community to come together to prevent such tragedies from occurring.

17. **Ms. So** Ka Pik (Hong Kong Special Administrative Region), referring to question 6, said

under the Reciprocal Notification Mechanism introduced in January 2001, the mainland and Hong Kong SAR authorities informed each other of unnatural deaths and criminal proceedings instituted by the police or by the customs or immigration authorities in their respective jurisdictions involving residents of the other party. Upon receiving such notification, the Hong Kong police force would inform family members and provide practical assistance to the detainee and/or his family and relayed their requests and concerns to the mainland authorities for follow-up.

Prohibition of slavery or forced or compulsory labour (article 8 of the Covenant)

18. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 7, said she wished to dispel the notion that the region might be a centre for human trafficking. Despite being a busy transportation hub with a liberal visa regime, it was ranked in the first tier of nations having robust measures to combat human smuggling and trafficking.

19. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) stressed that cases of human trafficking were rare. All such cases were investigated and the guilty parties prosecuted in accordance with the Crimes and Immigration Ordinances. Services available to victims of trafficking included welfare, psychological support and counselling, legal aid, medical care and temporary accommodations.

Right to privacy; to freedom of thought, conscience and religion; to freedom of opinion and expression, peaceful assembly and association (articles 17, 18, 19, 21 and 22 of the Covenant)

20. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 8, said that her Government had taken note of the Committee's concerns regarding the telecommunications Ordinance, and was committed to balancing the need to combat criminality and ensure public security while at the same time protecting privacy. She hoped that the new bill currently before the Legislative Council would satisfy the Committee's concerns.

21. **Mr. Allcock** (Hong Kong Special Administrative Region) said that the proposed legislation contained guarantees to prevent abuse of power and meet the Committee concerns with regard to privacy. For example, the most intrusive forms of covert surveillance would require approval by a judicial officer while less intrusive surveillance would be reviewed by an independent monitoring body after the fact; that body could order compensation if it found that the authorities had acted improperly.

22. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 9, said that freedom of expression and of the press were fundamental rights enshrined in article 27 of the Basic Law and article 16 of the Bill of Rights. The Region had a very diverse and vibrant free press. Her Government was committed to a full investigation of the reports and to prosecuting any guilty parties. In one case a suspect had been arrested and convicted in what was found to have been a debt-related matter, the investigation of the second case was still under way and in the third case the victim believed he was being pressured to modify his criticisms of the Government. The individuals involved were once again public figures; one had even been elected to the Legislative Council and one would soon be starting a new public affairs radio programme that proved her Government was bound by the rule of law and would not tolerate intimidation of the press.

23. **Mr. Allcock** (Hong Kong Special Administrative Region), referring to question 10, stressed that the law provided guarantees of freedom of the press; if the authorities wished to have a search warrant issued against a journalist they must satisfy a judge that such a warrant was necessary. In the case involving the Independent Commission against Corruption (ICAC) and searches of seven news agencies and the homes of their journalists, he explained that the stories printed by the journalists had included information which could identify an individual in the ICAC witness protection program. The ICAC had therefore requested the searches to ascertain the identity of the individuals who had disclosed to the press information proscribed by law. The court of first instance had found that the ICAC had acted wrongly but the Court of Appeal, while dismissing the ICAC appeal on technical grounds, had concluded that the Commission had acted lawfully in seeking to guarantee the integrity of its witness protection program.

24. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 11, said that residents of the Hong Kong SAR travelling outside the Region were expected to abide by the laws and regulations of the relevant jurisdiction. Individuals

detained by the mainland authorities would be dealt with in accordance with the reciprocal notification system she had described earlier. She stressed that within the Region, academic freedom was included under guarantees of freedom of expression and opinion contained in the Basic Law.

25. **Mr. Allcock** (Hong Kong Special Administrative Region), referring to question 12, said that a National Security Bill had been proposed to narrow the overly broad definitions of treason and sedition in the Crimes Ordinance inherited from long-established law so that the definitions concerning treason would be applicable only in times of war or armed invasion, and those relating to sedition would be limited to acts intended or likely to promote secession or disorder. Unfortunately that Bill had been withdrawn following opposition within the Legislative Council. He stressed, however, that in all such cases the courts interpreted the law in the light of the provisions of the Covenant.

26. *Ms. Chanet (Chairperson) resumed the Chair.*

27. **Mr. Wong** Sze Ping (Hong Kong Special Administrative Region), referring to question 13, said the Societies Ordinance on the registration and operations of societies was simply aimed at ensuring that societies operated within and according to the law and was in full compliance with the provisions on the right of association contained in articles 21 and 22 of the Covenant. It did not impose arbitrary restrictions but simply sought to ensure that the rights to peaceful assembly and association were exercised within the context of the laws necessary to protect the functioning of a democratic society. As of January 2006, there were 20,499 registered or exempted societies, 13,052 of which had been registered after 1 July 1997.

28. The Public Order Ordinance (question 14) regulated the right to assembly in accordance with article 39 of the Basic Law. It sought to balance the right of expression and opinion with the interests of the community at large. Since July 1997 more than 18,600 public meetings had been held, an average of 6 per day. Only 10 public meetings and 11 demonstrations had been prohibited, 9 of which had subsequently been authorized after the organizers had revised their request.

29. **Mr. Allcock** (Hong Kong Special Administrative Region) said the Ordinance simply required prior notification and authorization of public meetings; the courts interpreted the law with a view to guaranteeing fundamental rights while at the same time upholding the Government's right to impose reasonable restrictions as long as said restrictions were deemed necessary and met the criterion of proportionality. Major European jurisprudence in that area had served as a model as had the Covenant itself. The only difference with regard to articles 21 and 22 of the Covenant was that the courts had found the notion of "ordre public" too vague and that reference had been struck out.

30. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 15, said it was not true that restrictions had been placed on Falun Gong practitioners. They had the same rights as any other organization or religion and had been granted use of public facilities, most recently in January 2004. A request for use of a public facility in the month of May had been approved.

31. **Ms. So** Ka Pik (Hong Kong Special Administrative Region) stressed no one was barred from entering the Region on the grounds of religion or belief. It was the responsibility of the Immigration Department to decide whether to permit an alien to enter Hong Kong, taking into account all relevant factors and circumstances. With regard to a recent case involving visitors professing to be practitioners of Falun Gong, she said that case was still before the courts and it would therefore be inappropriate for her to make any comment.

32. **Ms. Lam Cheng** Yuet Ngor (Hong Kong Special Administrative Region), referring to question 16, said she was perplexed by the Committee's assertion that the Hong Kong SAR lacked an institutional framework for union recognition. The Employment Ordinance granted employees the right to become members or officers of trade unions registered under the Trade Unions Ordinance. An institutional framework did therefore exist and there was a vigorous trade union movement. Furthermore, her Government intended to strengthen the law to include guarantees of reinstatement for employees who had been wrongfully dismissed, including for trade union activities.

33. Although she was unclear as to the relevance of collective bargaining to the provisions of article 22 of the Covenant, she said that the Labour Department had established a Workplace Consultation Promotion Division to promote voluntary, direct negotiations between employers and employees. The Division also

promoted dialogue between employers and employees through tripartite committees at the industry level to deal with issues of common concern. The current system of voluntary collective bargaining seemed successful given the very low average number of working days lost through strikes and her Government had no plans to institutionalize compulsory collective bargaining.

34. **The Chairperson** invited the Committee to pose additional questions regarding the List of Issues.

35. **Mr. O'Flaherty**, after applauding the involvement of civil society in the preparation of the report and in efforts to ensure wide public dissemination of the report, said he wondered why the report submitted to the Committee contained 400 paragraphs but the booklet distributed to the public contained only 343 paragraphs. He also pointed out that although he had been able to access the report through the Home Affairs Department website, he had not been able to do so through the Government's official information website.

36. Turning to the question on the list of issues, he expressed great concern that an interpretation had had to be requested three times from the Standing Committee, a recourse which was intended to be used only in exceptional circumstances. He wondered whether any public consultations were held as a matter of course before referring an issue to the Standing Committee and in general what safeguards there were to ensure that the Standing Committee would not act *ultra vires* and would make an interpretation based on the law.

37. He reiterated, in the context of the reinterpretation of the Basic Law issued by the Standing Committee in April 2004, that in the Committee's view, already expressed in 1995, the British Government's reservation to article 25 (b) of the Covenant was no longer applicable given the existence of electoral provisions in the Hong Kong SAR. The April 2004 interpretation substantially changed the Basic Law and to some extent shifted the process for initiating electoral change from the Legislative Council to the Chief Executive and therefore perpetuated and exacerbated the problem of compliance with article 25 of the Covenant. The decision constituted an unfortunate step backwards, away from the goal of universal suffrage set out in the Basic Law. He would welcome the delegation's views on that issue.

38. He also had concerns regarding the compatibility of the electoral system with article 25 of the Covenant, in particular the continued existence of the functional constituencies. Although such electoral groups did exist in other jurisdictions, such bodies were incompatible with the goal of universal suffrage because they allowed an elite to have excessive power and gave some actors the ability to have multiple votes through corporate arrangements. He asked whether and how the delegation envisaged amending the functional constituency model with a view to its elimination.

39. Turning to questions 2 and 3 on the list of issues, he said that he had been disappointed to hear that Hong Kong SAR was not yet ready to establish a national human rights institution in accordance with the Paris Principles, for the existing mechanisms for the protection of human rights had been rated very poorly; he urged it to consider reviewing its position. The decision not to extend the mandate of the Equal Opportunity Commission was also disappointing. He wondered if it might be extended to encompass race. The lack of enforcement power when the Equal Opportunity Commission investigated the Government and its inadequate budget were other matters of concern. While the delegation had indicated that an independent panel had reported on the alleged EOC incident (question 3), he noted that civil society had been unhappy with its findings and therefore asked if any consideration was being given to reopening the panel. It would be useful if the Committee could receive the review which EOC had commissioned consultants to prepare and which had been completed in 2002.

40. With regard to question 4 of the list of issues on the National Security Bill, he was somewhat concerned at the views expressed in the Region regarding the bill and would like to know what type of civil society consultation would take place if and when another similar bill was introduced. It would be helpful if the delegation would comment on the future drafting process and compliance with the Covenant regarding such matters as information, powers of search and arrest, bans on organizations and sedition.

41. **Mr. Wieruszewski**, turning to question 5 of the list of issues, welcomed the extensive information provided regarding family violence, but wondered why

it had taken so long to pass measures on that crucial issue; the previous family violence bill had been submitted in 1987. Noting that, in one of the specific domestic violence cases cited, the victim had sought police protection but had not received it, he asked if there were any plans to provide specialized training for police and other law enforcement officers on the issue.

42. With regard to question 6, the "one country, two systems" situation of Hong Kong SAR was indeed unique, but the system of notification to assist its residents detained in mainland China was inefficient and should be kept under scrutiny.

43. **Mr. Solari Yrigoyen**, recalling the delegation's categorical statement to the effect that trafficking in persons and slavery did not exist in Hong Kong SAR, said that the Committee had learned from other sources that trafficking and exploitation did, indeed, take place, mainly involving immigrants from Southeast Asia who were drawn to the Region because of its relative affluence. While the minimum allowable wage would afford foreign domestic workers some protection, he would like to know if those workers also had the right to social security benefits. As far as trafficking was concerned, the law against child pornography adopted in 2003 represented progress, but the Committee would like to hear the results of its enforcement. He also asked if trafficking victims were given medical, legal or psychological assistance before being returned to their countries of origin.

44. **Mr. Ando**, referring to question 11 of the list of issues, drew attention to a case involving a historian of global reputation who had used materials already in the public domain in his teaching and research and had been detained by the Chinese authorities; his family in Hong Kong SAR had received only minimal information on his situation and their requests to assist him had gone unanswered. He invited comment from the delegation on the reciprocal arrangements for exchange of information and family notification.

45. Turning to question 12, he asked if the Government had any plans to provide further protections beyond those in its current policy on freedom of speech and expression. Regarding the restrictions placed on Falun Gong practitioners, including their use of public facilities, mentioned in question 15, he inquired whether Falun Gong would be recognized as a religious organization if it applied and what the conditions for such recognition would be.

46. Commenting on the delegation's surprise at question 16 on the list of issues, he pointed out that in 2003, a Committee of Experts of the International Labour Organization (ILO) had noted that trade unions in Hong Kong SAR were becoming anxious about curbs placed on their freedom to organize and about widespread anti-union discrimination.

47. **Ms. Wedgwood** noted that, in a variety of contexts, the delegation had said that the authorities were trying to achieve certain goals, but that due to the requirement of a two-thirds majority vote in the Legislative Council, action had been delayed. There was a very deep structural connection between the degree of participatory democracy in a society and the ability to achieve reform.

48. That was the case with the interception of communications, mentioned in question 8 on the list of issues. In 1997, a statute on the matter had been proposed, but the chief executive had apparently refused to sign it. Now, nine years later, there was no change, as there was no two-thirds majority support for the statute. In regard to the new executive order which the Committee had heard about, she wondered whether the order made any distinction as to the types of crime where electronic surveillance was permitted. Many criminologists believed that surveillance should be reserved for the most serious crimes. She also wondered what provisions had been made for ignoring or not recording exchanges which were not relevant to the offence under investigation, particularly when those exchanges had to do with the private life of the suspect. In addition, she wondered whether there were criminal penalties or an exclusionary rule regarding information that had been collected unlawfully.

49. The delegation had said that the press was free and published much criticism of the Hong Kong SAR authorities. However, it was likely that a large part of the self-censorship had to do with matters relating to the central Government, i.e., that of mainland China, and issues such as the Falun Gong, Taiwan, dissident activity and Beijing politics. It would be interesting to know whether the Hong Kong authorities had taken action to address the issue with China, to point out that even informal expressions of displeasure could have an impact on freedom of expression. For example, it had been alleged that pro-democracy newspapers had been boycotted by major real estate developers, thereby depriving the newspapers of significant advertising

revenue. That necessarily had an effect on freedom of expression.

50. Regarding earlier references to scholars from Hong Kong who had been arrested in mainland China, allegedly for merely engaging in acts of academic enquiry, she said that a country or region had an obligation to take positive steps to protect its nationals when they were mistreated by another Government. It was not enough simply to say that one must abide by the law of the host country. It was surprising that the Hong Kong SAR authorities did not seem to feel it was their duty to intercede to protect their citizens.

51. In its responses, the delegation had stated that collective bargaining was confrontational and would have a negative impact on labour markets. However, collective bargaining provided a model of democracy at the grass-roots level. Perhaps the hesitation on the part of the Hong Kong SAR regarding collective bargaining was due to the fact that it could serve as a model for other types of negotiation.

52. **Mr. Amor** stated that he had difficulty reconciling the statements in paragraphs 103 and 73 of the report, regarding the obligations of the States Parties and wondered to what degree the delegation believed the Committee's decisions, statements and observations were obligatory.

53. He wished further clarification as to whether the fees charged at border crossings were for the use of airport facilities, tunnels, roads, or whether they were, rather, taxes having to do with the State's sovereignty and ability to grant permission to cross its borders.

54. He would like to know the numbers of Falun Gong adherents, and whether the delegation considered the Falun Gong to be a religious community or a community of conviction. It would be interesting to know how the authorities defined a religion and whether the Falun Gong were able to move freely between mainland China and the Region.

55. **Sir Nigel Rodley**, referring to questions 1 and 2, requested clarification as to how the Standing Committee of the National People's Congress had reached its interpretation in April 2004, and, more particularly, how the latter had been initiated. He wished to know whether it had been initiated by the Government of the Hong Kong SAR, and if not, would appreciate more information as to when and where it had been initiated. Further details as to what might have led the Government to initiate it, if indeed it had, without consultation with civil society, the Legislative Council and other institutions, would be welcome.

56. The move to expand suffrage, in particular in the matter of electing members to the Legislative Council and expanding the Committee which elected the head of State, had been blocked by the Legislative Council because, although a majority had been reached, it had not been a two-thirds majority. It would be valuable to know what proportion of the popularly elected members of the Legislative Council had not backed that Government initiative. Given that the Hong Kong SAR had a sophisticated, educated population, and a stable, well-governed society, it was difficult to understand why the State Party believed that the people should not be entrusted with universal suffrage.

57. Finally, he said that it was disappointing that the Hong Kong SAR had as yet demonstrated no interest in the Committee's recommendation regarding the establishment of a police complaints machinery; in many countries, such a mechanism was deemed a necessary part of a system of checks and balances over those who had a monopoly on the maintenance of public order. It would be interesting to know how much consideration that recommendation had received in 1999 and what the response would be, should the Committee reiterate that recommendation.

The meeting rose at 5.55 p.m.